

LBM

Decision No. 19015.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
R. W. RASMUSSEN and B. JAMES,
a co-partnership, doing business
under the name and style of R.W.Ras-
mussen & Co., to sell and R.W.Ras-
mussen Company, Incorporated, a cor-
poration, to buy, certificate of
public convenience and necessity, and
certain physical property, and of
R.W.Rasmussen Company, Incorporated,
a corporation, to issue stock.)

ORIGINAL

Application No. 14084.

Gwyn H. Baker, for applicant.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Railroad Commission is asked to authorize R.W. Rasmussen and B. James, co-partners, doing business under the firm name and style of R.W.Rasmussen & Co., to transfer a certificate of public convenience and necessity to R.W.Rasmussen Company, Incorporated, and to authorize R.W.Rasmussen Company, Incorporated, to issue \$50,000. of its common capital stock in payment for the rights and physical properties of R.W.Rasmussen and B.James.

The certificate proposed to be transferred was granted to the co-partners by Decision No. 16318, dated March 29, 1926, in Application No. 11576. In that decision the Commission authorized R.W.Rasmussen and B. James, co-partners, to operate an auto truck service as a common carrier of milk, cream and cottage cheese between Oakland, San Francisco, Alameda, Berkeley and Hayward on the one hand, and Hayward, Decoto, Niles, Mission San Jose, Irvington,

Newark, Centerville, Alvarado, Gilroy, Salinas, Modesto, Hughson and Patterson and intermediate points, on the other hand. The present value of the physical properties to be transferred are set forth in applicant's "Corrected Exhibit B" as follows:-

Real Estate		\$2,500.00	
Improvements on real estate:			
Paving and driveways	\$370.00		
Building and building equip-			
ment	5,782.63		
Gasoline storage system	290.00		6,942.63
Ship equipment, furniture and			
supplies:			
Garage equipment	757.18		
Office furniture	403.54		
Spare parts and supplies	1,839.28		3,000.00
Trucks and trailers:			
Wilson 2-1/2 ton	1,615.00		
Kleiber 2-1/2 ton	3,373.81		
Fageol 3-1/2 ton	3,412.84		
Fageol 3-1/2 ton	3,412.84		
Kleiber 2-1/2 ton	3,597.51		
American La France 2-1/2			
ton	5,573.54		
White 2-ton	1,303.75		
White 3-1/2 ton	2,857.88		
Wilson 2-ton	1,088.00		
White 2-1/2 ton(new)	5,033.91		
Federal 3-ton(new)	5,698.67		
Federal 3-ton(new)	5,493.17		
Waukesha motor(new)	890.00		
Five trailers	2,831.80		
			<u>46,182.12</u>
Total			<u>\$58,624.75</u>

In addition, there will be transferred to the corporation, current assets which, as of October 1, 1927, are reported at \$13,637.50, consisting of cash, \$1,532.12; paid-up insurance, \$1,363.00; and accounts receivable, \$10,742.38; bringing the total assets to be transferred up to \$72,262.25. It appears, however, that in acquiring the assets, the corporation will assume the payment of indebtedness of \$19,467.54, consisting of outstanding notes, current accounts payable and contracts for the purchase

of equipment, as follows;-

Note to Oakland bank	\$3,750.00
Notes to Chas. R. Tate	1,000.00
Note to E. James	1,874.60
Contract to Federal Truck Co.	2,873.67
Contract to White Company	2,480.00
Contract to Truck and Trailer Equipment Company	266.00
Current accounts payable	<u>7,223.27</u>
Total	<u>\$ 19,467.54</u>

The note to Oakland Bank is dated September 18, 1926, matured September 18, 1927, bears interest at six percent and is secured by a deed of trust on the real estate proposed to be transferred to applicant corporation. It is alleged that there is an understanding with the bank that the original note may stand or may be renewed by the issuance of a new note at any time at the pleasure of either of the parties. The other notes and the contracts are payable within one year after date.

We believe that the assumption by the corporation of the indebtedness should be authorized by the Commission. Because of the reported agreement with the Oakland Bank to renew the \$3,750.00 note, the order herein, in addition, will authorize the corporation to issue its renewal note for a period of one year. In authorizing the transfer of the certificate of public convenience and necessity, the purchaser is hereby placed on notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which

may be given. The Commission at the early stages of the development of this kind of transportation should be extremely careful not to lend encouragement to the idea that these rights possess a substantial element of virtue.

ORDER

Application having been made to the Railroad Commission for authority to transfer operative rights and to issue stock, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the application should be granted, as herein provided, and that the issue of the stock is reasonably required for the purposes specified herein and that the expenditures for such purposes are not, in whole or in part, reasonably chargeable to operating expense or to income,

IT IS HEREBY ORDERED that R. W. Rasmussen and B. James, co-partners, doing business under the firm name and style of R.W. Rasmussen & Co. be, and they are hereby, authorized to transfer to R.W.Rasmussen Company, Incorporated, the operative rights acquired by them pursuant to Decision No. 16318, dated March 29, 1926 in Application No. 11576.

IT IS HEREBY FURTHER ORDERED that R. W. Rasmussen Company, Incorporated, be, and it hereby is, authorized to issue \$50,000.00 of its common capital stock and to assume the payment of not exceeding \$19,467.54 of indebtedness in payment for the operative rights, property and equipment of R.W.Rasmussen and B. James.

IT IS HEREBY FURTHER ORDERED that R.W.Rasmussen Company, Incorporated, be, and it hereby is, authorized to execute a deed of trust, substantially in the same form as that filed in this proceeding and to issue its promissory note, secured thereby, in the principal amount of not exceeding \$3,750.00, payable not more

than one year after date of this order, with interest at not exceeding six percent per annum, for the purpose of renewing the note of like amount, in favor of the Oakland Bank, which it herein is authorized to assume.

The authority herein granted is subject to the following conditions:-

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.

2. Applicants R. W. Rasmussen and B. James shall immediately unite with applicant R. W. Rasmussen Company, Incorporated, in common supplement to the tariffs on file with the Commission, applicants R.W.Rasmussen and B. James on the one half withdrawing, and applicant R.W.Rasmussen Company, Incorporated, on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3. Applicants R.W.Rasmussen and B. James shall immediately withdraw time schedules filed in their name with the Railroad Commission and applicant R.W.Rasmussen Company, Incorporated, shall immediately file in duplicate in its own name time schedules covering service heretofore given by applicants R.W.Rasmussen and B. James, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicants R. W. Rasmussen and B. James, or time schedules satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance

has first been secured.

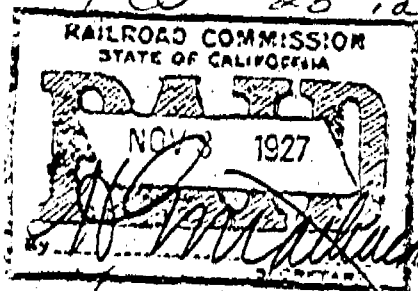
5. No vehicle may be operated by applicants unless such vehicle is owned by said applicants or is leased under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. The authority herein granted to execute a deed of trust is for the purpose of this proceeding only and is granted only insofar as this Commission has jurisdiction under the Auto Stage and Truck Transportation Act and is not intended as an approval of said deed of trust as to such other legal requirements to which said deed of trust may be subject.

7. R.W.Rasmussen Company, Incorporated, shall keep such record of the issue of the stock herein authorized as will enable it to file, within thirty days after such issue, a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

8. The authority herein granted to assume the payment of indebtedness will become effective when R.W.Rasmussen Company, Incorporated, has paid the minimum fee prescribed by Section "6" of the Auto Stage and Truck Transportation Act, and Section "57" of the Public Utilities Act, which fee is twenty-five (\$25.) Dollars.

DATED at San Francisco, California, this 4th day of ~~November~~
October, 1927.



Ernest Scott
Chairman
Leon Whitell
Thomas B. Boutwell
W. H. C. C.
Commissioners.